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BEFORE THE

# Federal Communications Commission

In the Matter of

Billed Party Preference  
for 0+ InterLATA Calls

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CC Docket No. 92-77

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FEDERAL COMMUNICATIONS COMMISSION  
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COMMENTS OF  
AIRPORTS ASSOCIATION COUNCIL INTERNATIONAL - NA

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## SUMMARY

On behalf of its United States members, the Airports Council International -- North America ("ACI-NA") hereby submits its comments in the Commission's CC Docket No. 92-77 proceeding opposing the application of a billed party preference ("BPP") system for 0+ and 0- interLATA calls from airport pay telephones. ACI-NA represents the local, regional and state governing bodies that own and operate the principal airports served by scheduled air carriers in the United States.

As detailed in these comments, application for BPP to airport pay telephones would be inconsistent with federal law and regulations which require airport operators to operate their facilities in as self-sustaining a manner as possible. BPP would deplete established revenue streams that contribute to the economical operations of airports and at the same time sustaining the widespread availability of airport pay telephone services. If adopted, BPP will make it much harder for airports to justify the easy access to pay telephones which is characteristic of U.S. airports. With the loss of revenues from pay telephone services under BPP, airports will be forced to consider reducing the number of pay telephones on the airport premises and making greater space available to concession or services which do generate rent or other revenues.

BPP will have an extremely damaging impact on airport budgets -- at a time when reduced funding available to airport operators already poses enormous challenges to the ability of

airport managers to run their facilities as efficiently and safely as possible. Under BPP, consumers are likely to pay more for pay telephone services and, in return, receive less convenience and quality because of reduced airport pay telephone deployment.

The Commission has viable, less costly alternatives to mandating BPP -- which will not inflict financial burdens on airports' pay telephone management and general operating budgets. For all of these reasons, described further in these comments, ACI-NA urges the Commission not to adopt BPP for airport pay telephones.

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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COMMENTS OF  
AIRPORTS COUNCIL INTERNATIONAL--NORTH AMERICA

On behalf of its United States members, the Airports Council International -- North America ("ACI-NA") hereby submits its comments in response to the Commission's Further Notice of Proposed Rulemaking ("FNPRM") in CC Docket No. 92-77 seeking additional comments on the merits of a billed party preference ("BPP") system for all interLATA 0+ and 0- calls.<sup>1/</sup>

As detailed below, ACI-NA urges that the Commission not adopt BPP for 0+ and 0- calls from airport pay telephones. It is incumbent upon the Commission to consider whether a system of BPP for pay telephones is consistent with other federal laws, regulations and policies applicable in the particular settings in which BPP would be required. ACI-NA submits, in developing its tentative conclusions in the FNPRM, that the Commission has not adequately considered this issue with respect to publicly owned airports. Application of BPP to airport pay telephone services would be inconsistent with federal law and regulations, as well as national transportation policy, under which airport

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<sup>1/</sup> FCC 94-117 (released June 6, 1994).

authorities must operate their facilities in as self-sustaining a manner as possible. BPP would deplete established revenue streams that contribute to the economical operation of airports and at the same time sustain widespread availability of airport pay telephone services. BPP would force airport operators in particular to devise ways to replace the revenues which otherwise would have been provided from presubscription fees from pay telephones in airport terminals. At the same time, BPP would make it much harder for airports to justify the easy availability of pay telephones which is now characteristic of U.S. airports. For these reasons, the Commission should reject BPP and maintain presubscription arrangements for airport pay telephones.

**I. INTRODUCTION AND STATEMENT OF INTEREST**

ACI-NA has a substantial interest in this proceeding because, if adopted, BPP would have a profoundly damaging impact on the economics and deployment of airport pay telephone services. ACI-NA represents the local, regional and state governing bodies that own and operate the principal airports served by scheduled air carriers in the United States. The U.S. airport members of ACI-NA enplane more than 90 percent of the total domestic, and virtually all international, scheduled airline passenger and cargo traffic in the United States. These airports operate under financial requirements set by federal law in the Airport and Airway Improvement Act, 49 U.S.C. App. § 2210(a), and implementing regulations, which limit the charges

assessed on airport tenants and mandate that the airports operate as self-sufficiently as possible.<sup>2/</sup> This federal requirement - which fully applies to the airports' deployment of pay telephone services in airport terminals for public use -- is a condition to an airport's receipt of vital federal grant money for airport development projects. ACI-NA respectfully submits that BPP will impair the ability of its members to fulfill this mandate with respect to the deployment of pay telephone services in public airports.

**II. THE WIDESPREAD AVAILABILITY OF CONVENIENT, STATE-OF-THE-ART PAY TELEPHONE SERVICES IN AIRPORT TERMINALS IS IN THE PUBLIC INTEREST**

ACI-NA's members fully appreciate that entities responsible for the operation and management of publicly funded and publicly available facilities, such as airports, must be guided by what will serve the best interests of public users, including ready access to technologically advanced, economical telephone services

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<sup>2/</sup> 49 U.S.C. App. 2210(a) (Section 511(a) of the Airport and Airway Improvement Act) provides in pertinent part:

As a condition precedent to approval of an airport development project contained in a project grant application submitted under this chapter, the Secretary shall receive assurances, in writing, satisfactory to the Secretary, that . . .

(9) the airport operator or owner will maintain a fee and rental structure for the facilities and services being provided the airport users which will make the airport as self-sustaining as possible under the circumstances existing at that particular airport, taking into account the volume of traffic and the economy of collection . . .

and equipment. Several factors combine to assure that the "public interest" is well-served at U.S. airports today regarding the variety of pay telephone and other public services available to users at airports.

In general, the governing boards and commissioners of public use airports are fully accountable local officials. They are either elected or appointed by elected officials and have a clear mandate to maintain a high level of public satisfaction with the airport. Indeed, the quality of management at a local airport is often the measure of successful local governmental administration overall in many communities. Airports typically invest substantial sums in public facilities serving both the travelling public and the general public that use, work at, or visit the airport.

Airport pay telephone service is one of the most important public services deployed on an airport premises, because use of pay telephones is vital to the convenience of the travelling public. However, like all other public use services made available to the travelling public by airport management, the level of pay telephone services deployed at the airport must be financially justified. If, under BPP, it is no longer economical for an airport manager to provide a large number of pay telephone services, then the number of telephones is likely to be limited. To do otherwise would ignore the fiscal responsibilities imposed on airport operators by federal law and regulations.



In ACI-NA's experience, consumer complaints would surely be the result of an airport's failure to provide for enough pay telephones for the volume of travelers passing through airport terminals. Because of the nature of air travel, telephone availability at convenient locations and in sufficient quantities to handle the extremely "peaked" nature of air travel demands is of primary importance in satisfying the public interest at airports. Unlike other aggregator locations, such as hospitals or universities, a user's opportunity to use a pay telephone is limited by flight schedules. The nature of air travel and the relative expense of in-flight telephone services make the convenient placement of large numbers of pay telephones a major determinant of public satisfaction with telephone service at an airport and with the airport as a whole.

The current presubscription system for 0 calls from airport pay telephones supports the widest deployment of pay telephones in as "self sustaining" a manner as possible. Presubscription allows airport operators to choose a high quality interexchange carrier for 0 calls that will best suit the needs of the airport and offer the most economical arrangement for supporting pay telephones services throughout an airport terminal. Presubscription allows the airport operator to change IXC's if the selected carrier does not deliver on its promise of high quality, reliable, and economical pay telephone services and equipment. Moreover, pursuant to Commission regulations implementing the Telephone Operator Consumer Services Improvement Act of 1990,

presubscription allows the end user to choose a different carrier through access code dialing. Indeed, IXCs broadly advertise access code methods on national television and on signage and billboards near pay telephones in numerous airports nationwide. In the event that an airport visitor is dissatisfied with the presubscribed IXC, alternatives are available. Presubscription arrangements have ensured that public satisfaction with pay telephone deployment remains high. Presubscription has therefore properly focused competition on maintaining the adequacy and availability of public use telephone services -- ends which clearly benefit both end users, who demand easy access to these vital services, and airport operators, who must constantly strive to accommodate ever-increasing user needs (such as fax and data transmission capability) while not increasing airport operating expenses.

**III. BPP WILL IMPOSE UNJUSTIFIED FINANCIAL BURDENS ON AIRPORT OPERATING BUDGETS, FORCING AIRPORT OPERATORS TO PURSUE ALTERNATIVE FINANCIAL MEASURES FOR PAY TELEPHONE SERVICES WHICH WILL INCREASE CONSUMER RATES, AND WILL NOT GUARANTEE WIDESPREAD, CONVENIENT PAY TELEPHONE DEPLOYMENT**

ACI-NA strongly disagrees with the Commission's tentative conclusion that BPP would advance the public interest and should replace presubscription. The Commission's cost-benefit analysis of BPP does not take into account the legal and operational realities of airports, which are publicly-owned entities subject to statutory and regulatory requirements not applicable to other aggregators. The Commission's BPP proposal overlooks the whole

range of financial issues which are critical to an airport operator's decision to deploy any public use service in an airport -- including pay telephones -- for the convenience of the travelling public.

At a public airport, the cost of non-governmental services -- e.g., pay telephone service -- must be recovered through financial arrangements based on a "user pays" approach. Businesses benefitting from the airport market must accordingly pay reasonable compensation to the airport for the privilege of gaining access to the market.<sup>3/</sup> For pay telephone service, compensation to the airport is based on a percentage of, or is related to, the gross revenues generated by the telephone carriers that benefit from provisioning service at the airport. Furthermore, under Federal law, airports must use revenues derived from pay telephone services -- as well as revenues from other public services and concessions -- for maintenance, operation and improvement of vital airport facilities<sup>4/</sup>, as well as to support the cost of complying with a host of federal, state and local laws and regulations.<sup>5/</sup> Airports therefore

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<sup>3/</sup> This principle applies even if the business is not physically located on the airport. See, e.g., Alamo Rent-A-Car, Inc. v. Sarasota Manatee Airport Authority, 825 F.2d 367 (11th Cir. 1987), cert. denied, 108 S. Ct. 1022, later app. 906 F.2d 516 (11th Cir. 1990), cert. denied, 111 S. Ct. 1073.

<sup>4/</sup> See 49 U.S.C. App 2210(a)(12), which prohibits airports which receive federal grants-in-aid (i.e., virtually all U.S. commercial service airports) from using revenues generated on the airport for non-airport purposes.

<sup>5/</sup> See Comments of the American Association of Airport Executives (filed July 7, 1994) at 3.

attempt to ensure that all public services at the airport contribute a fair share to the operating costs and requirements of the airport facilities.<sup>6/</sup>

If the Commission adopts BPP, it will force airport managers to take a hard look at alternative financial measures to avoid having to reduce pay telephone deployment, since adequate access to this service is clearly critical to the travelling public. For example, in order to make up for major revenue shortfalls suffered as a result of losing commissions on telephone services under BPP, the airport could, as one alternative, impose increased pay telephone rental space fees on local exchange carriers in order to recover this money. There is, however, no guarantee that this measure would be successful, since LECs could simply make a business decision to reduce the number of deployed pay telephones to avoid having to pay this increased rent to the airport. Even if the LECs did pay the higher fees, those LEC costs ultimately would be passed on to end users in the form of higher telephone service rates. This result wholly conflicts with the Commission's conclusion that BPP would serve the consumer's interest.

As a second alternative, the airport could ask LECs to impose a surcharge on pay telephone calls to be passed on to the airport to make up for revenue losses suffered under BPP. Yet, this option may not work because LECs -- which dominate the pay telephone market with substantial negotiating power vis-a-vis an

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<sup>6/</sup> See id.

airport -- could simply refuse to levy this charge on behalf of the airport.

Thus, neither of these potential alternatives provide any certainty that the pay telephone provider will meet the pay telephone deployment needs of the airport. Moreover, under BPP, the airport operator will have little effective negotiating power to require a LEC pay telephone provider to guarantee that travellers' needs will be met at normal traffic volumes, let alone peak periods.

In practice, an airport operator is likely to consider either attempting to replace the lost revenues by increasing income from other airport concessions, or reducing the number of pay telephones on the airport premises and making greater space available to concessions or services which generate rent or other revenues, or a combination of both. Federal law prohibits aircraft operators from being required to contribute to the costs of facilities which they do not use (Northwest Airlines, Inc. v. County of Kent, Michigan, \_\_\_ U.S. \_\_\_ (No. 92-97, January 24, 1994), so users of concessions such as parking, newsstands, airport restaurants, etc., would bear the burden of making up for the revenues lost from pay phone presubscription fees. Such a cross-subsidy is 1) unfair, and 2) likely to annoy those who bear the cost of making up the difference. Local governmental, airport operators are responsible for airport management and policy, and will be faced with the complaints from those airport users who are unhappy with the results of implementation of BPP.

From their perspective, BPP is unlikely to provide benefits which outweigh the burdens consumers at airports will experience if it is implemented.

ACI-NA appreciates the Commission's pro-consumer intent in considering the merits of BPP, and that the proposal appears superficially attractive. ACI-NA submits, however, that BPP cannot live up to its potential in practice -- it is too expensive, technically uncertain and untested. Cost recovery issues for BPP remain ill-defined and undecided. The potential for BPP to enrich the nation's infrastructure is purely speculative at this time. Moreover, in the public airport context, ACI-NA submits that the obligations of public airport operators to assure constituent satisfaction with airport services acts as the effective constraint on carrier abuses which may occur in other environments. To enact a BPP scheme in reaction to those abuses, instead of dealing directly with the perpetrators, would simply serve to enrich the pockets of local telephone companies who implement BPP, at the expense of important revenues to airport operators.

ACI-NA believes that in the process of focusing on BPP's potential to provide consumers with carrier choice for 0 calls under a BPP system, the Commission has lost sight of important, more basic issues such as the potential for BPP to reduce the number of pay telephones installed in public airports, to drive up consumer costs. ACI-NA fully agrees with the observation of the American Association of Airport Executives that the "benefit

of carrier preference [expected from BPP] is not much of a benefit if it carries with it increased difficulty for a customer finding a pay phone in a public airport from which to place a call."<sup>7/</sup> It would not serve the public interest to place unwarranted financial burdens on public airport operations that rely on telephone commissions not only to deploy pay telephones widely, but also to contribute -- as do all other services available at the airport -- to self-sustaining airport operations.

BPP will have an extremely damaging impact on airport budgets -- at a time when strapped private financial resources and public funding available to airport operators already pose enormous challenges to the ability of airport managers to run their facilities as economically and as safely as possible. It is well-known that the airport industry as a whole is engaged in massive cost-containment measures, including an attempt by commercial airlines to reduce their airport costs. Airports also face the fiscal challenges associated with federal funding levels, as federal budget deficits threaten to reduce the funding available to sustain and improve these vital public facilities.<sup>8/</sup>

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<sup>7/</sup> Comments of the American Association of Airport Executives (filed July 7, 1994) at 3.

<sup>8/</sup> H.R. 4556, the Transportation Appropriations legislation for Fiscal Year 1995, is expected to make much less funding available for the airport improvement grants-in-aid than did the FY 1994 legislation. The House version of the bill contains \$1.5 billion in AIP funding and the Senate version contains \$1.45 billion.  
(continued...)

The Commission must understand and consider that, notwithstanding its conceptual appeal, BPP, in practice, will impair the financial justification for widespread pay telephone deployment in airports today, and will exacerbate financial constraints faced by public airport operators. These results do not advance public interest, and should not be imposed on commercial service airports.

**IV. INSTEAD OF PURSUING BPP, THE COMMISSION SHOULD EXPEND ITS RESOURCES ON ENFORCING ITS ESTABLISHED REGULATIONS FOR THE OPERATOR SERVICES MARKET**

Regulatory problems and issues in the operator services market are at the heart of the Commission's consideration of BPP. The BPP proposal surely is not -- and, given its expense and technical complexity, should not be -- an end in itself. To the extent that the Commission believes that specific rate and blocked carrier access issues must be resolved in the operator services market, ACI-NA urges the Commission to act directly to solve these problems in specific cases, rather than indirectly, by imposing BPP on the entire operator services industry.

The Commission has the authority, and should summon the specific resources, to pursue a direct enforcement approach as a viable, lower cost alternative to mandating BPP. (Indeed, since BPP cannot be implemented until 1997 at the earliest, the Commission should be undertaking its enforcement obligations

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8/ (...continued)

For FY 1994, the Airport Improvement Program was funded at a level of \$1.69 billion.



without regard to BPP.) ACI-NA believes that the resources the Commission would otherwise devote to implementing BPP -- including tariff review and dispute resolution, legal appeals and numerous implementation rulemakings and reconsideration proceedings -- would be better spent on enforcing its existing regulations mandated by Congress in the Telephone Operator Services Improvement Act of 1990 (TOCSIA). In the long term, such agency action would be far less expensive than BPP, and, to the extent that the Commission takes enforcement action against any violators of its rules, those actions will have a deterrent effect on all service providers in the market.

The Commission has stated that it will not mandate BPP if viable, lower cost alternatives to BPP exist.<sup>2/</sup> Since the Commission has lower cost alternatives which preserve greater competition in the operator services market and do not upset the established financial systems of airport operators, the Commission should not mandate BPP.

## V. CONCLUSION

In short, the nation's major public airport financial constraints to their already burdened operating budgets if the Commission mandates BPP. Under BPP, consumers are likely to pay more for pay telephone services and, in return, receive less convenience and quality because of reduced airport telephone deployment. Moreover, the Commission has viable, less costly

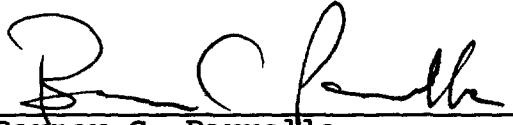
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<sup>2/</sup> FNPRM at ¶ 2.

alternatives to mandating BPP. For all of the reasons detailed above, ACI-NA urges the Commission not to adopt BPP for airport pay telephones.

Respectfully submitted,

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